

MEMORANDUM

August 25, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: DENNIS M. GONZALES
Principal Deputy County Counsel
General Litigation Division

RE: **Cesar Portillo v. County of Los Angeles**
United States District Court Case No. CV 034 423 GHK(Ex)

DATE OF
INCIDENT: July 19, 2002

AUTHORITY
REQUESTED: \$30,000

COUNTY
DEPARTMENT: Sheriff's Department

CLAIMS BOARD ACTION:


☒ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on October 4, 2004

SUMMARY

This is a recommendation to settle for \$30,000, a lawsuit filed by Cesar Portillo, who alleges that on July 19, 2002, his federal civil rights were violated when he was falsely arrested and subjected to the use of excessive force by Sheriff's Deputies.

LEGAL PRINCIPLES

The County and its employees may be held liable under the Federal Civil Rights Act, when a person is arrested without probable cause, or when the arrested person is subjected to excessive force either during or after his arrest. The prevailing party in a lawsuit brought under the Federal Civil Rights Act may be awarded attorney fees.

SUMMARY OF FACTS

On July 19, 2002, at approximately 11:00 p.m., a Los Angeles County Sheriff's Deputy observed Cesar Portillo standing next to a known drug house. The Sheriff's Deputy approached Mr. Portillo and engaged him in conversation. The Sheriff's Deputy observed two small balloons secreted in Mr. Portillo's mouth. The Sheriff's Deputy's training and experience suggested that narcotics are frequently packaged in that fashion. Once the balloons were observed, Mr. Portillo swallowed them. Mr. Portillo claims he was choked by the deputy for no reason.

Backup units were called, and Mr. Portillo was placed in the backseat of the patrol car. The Sheriff's Deputy then observed a small plastic baggie, in the backseat next to Mr. Portillo, containing what appeared to be a white powdery substance. Subsequent testing confirmed it was cocaine.

Mr. Portillo was taken into custody, and transported to a hospital, where the Sheriff's Deputy requested that Mr. Portillo's stomach be pumped to address the health risks regarding the possibility of the balloons rupturing. The emergency room doctor refused to perform the procedure due to lack of consent by Mr. Portillo.

At the criminal hearing, Mr. Portillo filed a motion, which resulted in the court dismissing the case. The court based its dismissal on chemical testing of the plastic baggie for saliva, which resulted in a finding that there was no saliva, and a determination that the baggie could not be specifically linked to Mr. Portillo. Cesar Portillo had been incarcerated for 286 days prior to the criminal court dismissing the case.

DAMAGES

Should this matter proceed to trial we estimate the potential damages could be as follows.

Medical Expenses	\$ 500
Pain and Suffering	\$ 10,000
Incarceration	\$300,000
Civil Rights Attorneys Fees	<u>\$100,000</u>
Total	<u>\$410,500</u>

STATUS OF CASE

The trial court proceedings in this matter have been suspended pending consideration of this proposed settlement.

Legal expenses incurred by the County to date in defense of this matter are attorney fees of \$89,897 and \$8,139 in costs.

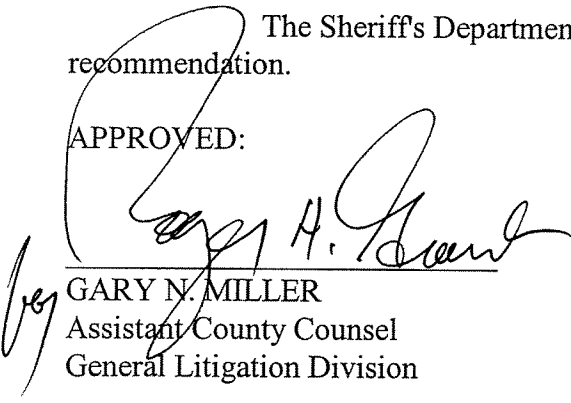
EVALUATION

While Cesar Portillo's excessive force allegation does not appear credible due to no bruising or redness found on his neck, the determination that there was no saliva on the baggie may lead the jury to believe that the baggie was "planted."

Cesar Portillo's demand had been firm at \$300,000 until the trial judge persuaded him that \$30,000 was a reasonable settlement. If Cesar Portillo were to prevail at trial, he would be entitled to an award of attorney fees, which could exceed the proposed settlement amount.

The Sheriff's Department concurs in the settlement recommendation.

APPROVED:



GARY N. MILLER
Assistant County Counsel
General Litigation Division

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